

ESTATE OF VICTOR BLACKEAGLE

IBIA 87-50

Decided March 30, 1988

Appeal from an order denying petition for reopening issued by Administrative Law Judge Robert C. Snashall in Indian Probate IP PO 100L 84-125.

Affirmed.

1. Indian Probate: Children, Adopted: Right to Inherit: Generally--
Indian Probate: State Law: Applicability to Indian Probate, Intestate Estates

The inheritance rights of an adopted child are determined by the law of the state in which trust or restricted real property is located.

2. Indian Probate: State Law: Applicability to Indian Probate, Intestate Estates

When an Indian owning land in trust or restricted status dies without a will, the trust property passes to his or her heirs as determined with reference to state laws of intestate succession.

APPEARANCES: Victor James Blackeagle, a.k.a. Timothy William Davidson, pro se.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Victor James Blackeagle, a.k.a. Timothy William Davidson, seeks review of a July 20, 1987, order denying reopening issued by Administrative Law Judge Robert C. Snashall in the estate of Victor Blackeagle (decendent). For the reasons discussed below, the Board affirms that order.

Background

Decendent, an unallotted Nez Perce Indian, was born on October 16, 1926, and died on November 12, 1983, at Lewiston, Idaho. At his death, he owned trust or restricted interests in property located on the Nez Perce Reservation in Idaho and the Umatilla Reservation in Oregon. He left a will, executed on April 16, 1979, in which he devised his entire estate to his wife, Viola Picard Blackeagle.

Judge Snashall held a hearing to probate decedent's trust or restricted estate on April 23, 1984, at Lapwai, Idaho. On June 29, 1984, he issued an order determining heirs. Because decedent's wife had predeceased him, and decedent's will did not provide for alternative gifts, the Judge found that the will was of no force and effect and that decedent's trust or restricted property must therefore pass through intestate succession. He determined that decedent's heirs were his two surviving half-brothers, Austin Lindsley and Glenn Paul. He also found that decedent was survived by three children, including appellant, 1/ but that since all three had been adopted out, they were not entitled to inherit from decedent under the laws of Idaho and Oregon.

On July 16, 1987, appellant filed a petition for reopening on behalf of himself and one of his two sisters, Victoria Blackeagle, alleging that he did not have notice of the 1984 hearing. 2/ He sought to have his sister and himself recognized as heirs of decedent. Judge Snashall denied the petition on July 20, 1987, finding that appellant had offered no legal basis upon which appellant and his sister could be so recognized.

Appellant filed a notice of appeal to the Board, which was received by the Board on September 28, 1987. No briefs were filed on appeal.

Discussion and Conclusions

Appellant argues in his notice of appeal that his adoption by non-Indians has denied him his rightful heritage. He also objects to the use of state law to determine his right to inherit from his natural father.

Appellant and his sister were adopted by William B. Davidson, Jr., and Mary V. Davidson. The adoptions were finalized in orders of adoption issued by the Probate Court of Lewis County, Idaho, on May 25, 1957. Appellant does not challenge the validity of the adoptions, and there appears to be no reason to question their validity.

[1, 2] Judge Snashall found that the controlling laws in this case were the Idaho and Oregon laws governing intestate succession. His conclusion is in accord with Board decisions holding that the inheritance rights of adopted children are determined by application of the law of the state in which the trust or restricted property is located. Estate of Richard Doyle Two Bulls, 11 IBIA 77, 82-84 (1983). 3/ Application of state

1/ The other surviving children are Victoria Ann Blackeagle, a.k.a. Rebecca Susan Davidson, and Rosaline Rae Blackeagle, a.k.a. Teweyahkin Rose Perry. Another child, Vivian Nadine Blackeagle, a.k.a. Kitakita Brenna Perry, was also adopted out but died at an early age.

2/ Appellant's copy of the notice of hearing was sent to him in care of the Superintendent, Northern Idaho Agency, Bureau of Indian Affairs. The record does not show whether the Superintendent was able to locate appellant at that time.

3/ A question concerning the right of an adopted child to inherit from a natural parent is distinct from a question concerning the legal status of an

law to determine inheritance rights to Indian trust or restricted property is required by Federal statute. 25 U.S.C. § 348 (1982) provides, with regard to allotted lands of Indians, "[t]hat the law of descent and partition in force in the State or Territory where such lands are situate shall apply thereto." Accordingly, when the Department of the Interior probates the estate of an Indian who dies without a will, it is required to apply the laws of intestate succession of the state or states in which the Indian's trust or restricted land is located.

Idaho law governing the inheritance rights of adopted children appears in the Idaho Uniform Probate Code:

If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

(a) An adopted person is a child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent and adoption by the spouse of a natural parent has no effect on the relationship between the child and a deceased, undivorced natural parent.

Idaho Code § 15-2-109. 4/

Oregon law is similar:

(1) An adopted person, the issue and kindred of the adopted person shall take by intestate succession from the adoptive parents, their issue and kindred, and the adoptive parents, their issue and kindred shall take by intestate succession from the adopted person, the issue and kindred of the adopted person as though the adopted person were the natural child of the adoptive parents.

(2) An adopted person shall cease to be treated as the child of the person's natural parents for all purposes of

fn. 3 (continued)

adopted child, which is determined by the law of the jurisdiction granting the adoption. This distinction was discussed extensively in Estate of Two Bulls, 11 IBIA at 82-84. In this instance, the result would be the same even if the issue were construed to be an issue concerning appellant's legal status, because the law of Idaho would apply in either case, and the law of Oregon is virtually identical to the law of Idaho.

4/ See also Idaho Code §§ 16-1508 and 16-1509. Section 16-1509 provides that "all rights of such [an adopted] child from and through [his or her] natural parents including the right of inheritance are hereby terminated unless specifically provided by will."

intestate succession by the adopted person, the issue and kindred of the adopted person and the natural parents, their issue and kindred, except:

[exceptions concerning adoptions by stepparents married to natural parents]

Or. Rev. Stat. § 112.175.

Under the laws of Idaho and Oregon, appellant and appellant's sister were not entitled to inherit from decedent. Judge Snashall was therefore correct in denying appellant's petition for reopening.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Snashall's July 20, 1987, order denying reopening is affirmed.

Anita Vogt
Administrative Judge

I concur:

Kathryn A. Lynn
Chief Administrative Judge

5/ This decision in no way restricts the right of any heir of decedent to transfer decedent's former property to appellant, either during life or through a will, should he so desire.